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大连海事法院

2020 年海事审判报告

特别说明：本白皮书以中英两种文字发布，以中文文本为准。

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Dalian Maritime Court

Report on Trials (2020)

Special Statement: This paper is announced in Chinese and English,
and the Chinese Version shall prevail.

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前言

随着海洋强国战略、“一带一路”、自由贸易试验区以及国际海事司法中心建设的不断推进，我国涉外海事审判的国际公信力和影响力日益提升，以更加积极主动的姿态融入国家大局、以更加优质高效的司法服务国家战略、以更加务实公平的举措保障国家战略，海事法院需要把握新要求，担当新使命，用实际行动推动海事司法实现新作为。海事审判这艘巨轮，也必将沿着习近平总书记法治思想指引的方向和航道，以努力让人民群众在每一个司法案件中感受到公平正义为目标，加快国际海事司法中心建设，乘风破浪开新篇，志坚行稳再启航。

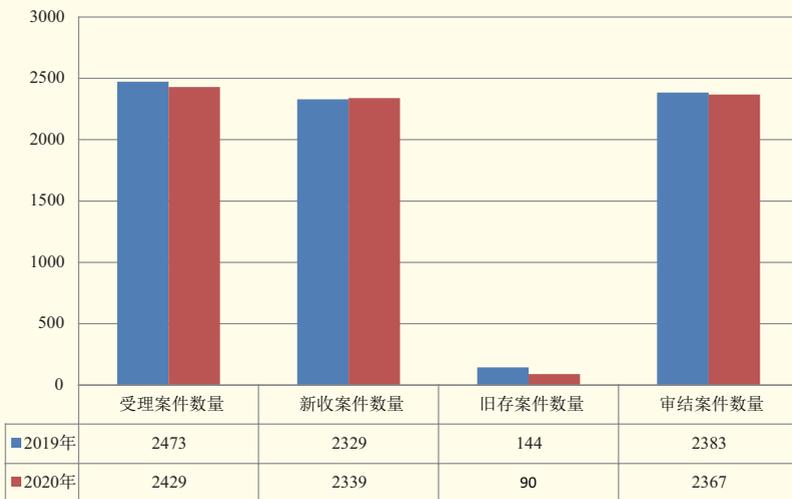
2020年，大连海事法院全面贯彻习近平法治思想，自觉践行新发展理念，充分发挥海事审判职能作用，全力营造市场化法治化国际化营商环境，大力推进改革创新，加快推进“一流海事法院”建设，奋力推动各项工作走在全省法院前列，各项工作稳中有进，持续向好，为统筹推进疫情防控和经济社会高质量发展提供了有力的海事司法服务和保障。

一、基本情况

（一）总体概况

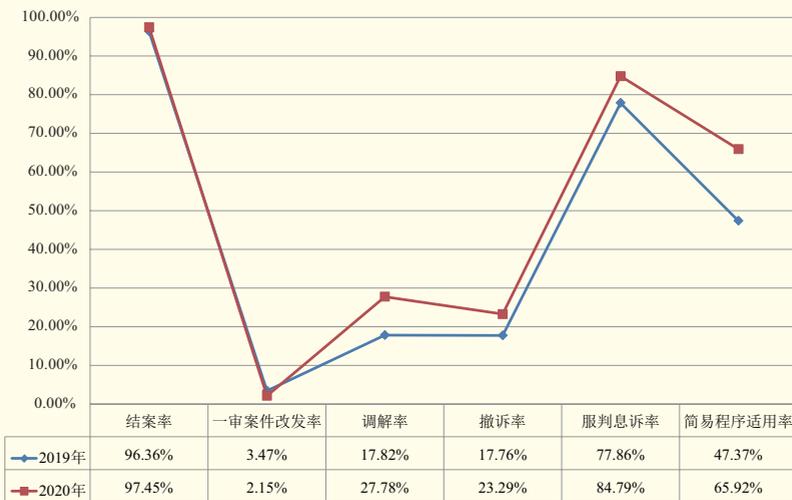
1. 收结案数量与去年基本持平。2020年，大连海事法院受理各类案件2429件，同比下降1.78%。其中新收2339件，同比上升0.43%；旧存90件，同比下降37.5%；审结2367件，同比下降0.67%；结案率97.45%，同比上升1.09个百分点，居全国十一家海事法院第1位、全省中级法院第4位。

2020年与2019年收结存案件数量对比图



2. 主要质效指标持续向好。 一审案件改发率 2.15%，同比下降 1.32 个百分点，居全省中级法院第 1 位；调解率 27.78%，同比上升 9.96 个百分点；撤诉率 23.29%，同比上升 5.53 个百分点；判后答疑率 100%，居全省中级法院第 1 位；服判息诉率 84.79%，同比上升 6.93 个百分点；简易程序适用率 65.92%，同比上升 18.55 个百分点；全年清理 6 个月以上未结案件 125 件，清结率达到 93.28%。

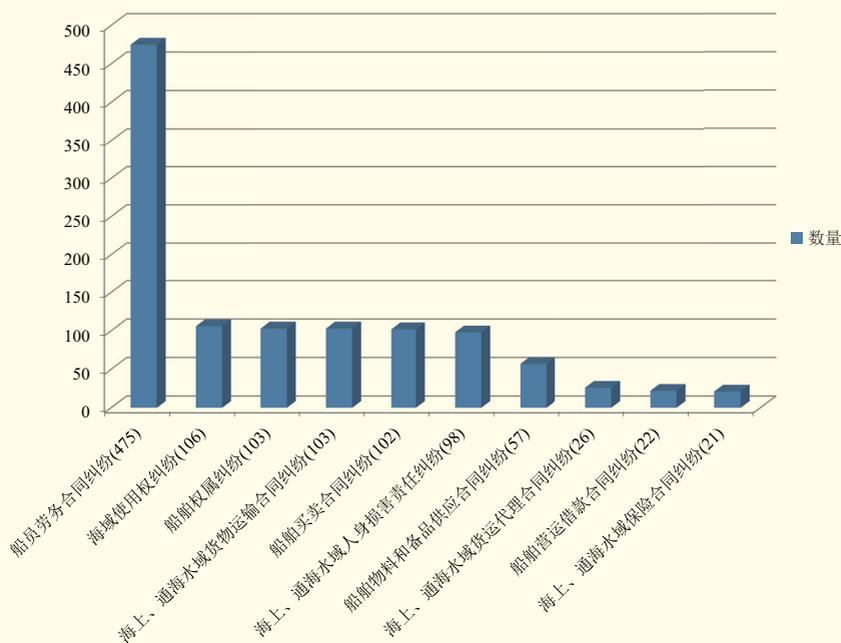
2020年与2019年主要质效指标对比图



（二）案件分类

1. 民事案件¹：受理 1507 件，同比上升 6.28%。其中新收 1451 件，同比上升 8.2%；审结 1471 件，同比上升 8%；结案率 97.61%，同比上升 1.56 个百分点；涉案标的额 29.66 亿元，同比减少 38.05 亿元。

民事案件中，海事海商案件受理 1339 件，同比上升 2.45%。其中新收 1312 件，同比上升 6.41%；审结 1305 件，同比上升 4.23%；结案率 97.46%，同比上升 1.67 个百分点。数量居前十位的新收海事海商案件共 1113 件，具体类型如下：



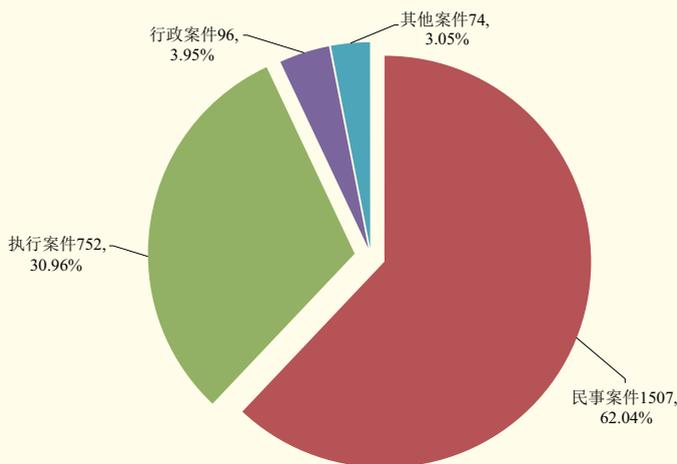
2. 行政案件：受理 96 件，同比下降 48.11%。其中新收 83 件，同比下降 54.14%；审结 93 件，同比下降 46.55%；结案率 96.88%，同比上升 2.83 个百分点；涉案标的额 1.38 亿元，同比减少 2.85 亿元。

¹ 包含海事海商案件和海事特别程序案件，不包含非诉保全审查案件、国家赔偿案件、司法救助案件、司法协助案件和执行案件。



3. 执行案件：受理 752 件，同比上升 0.8%。其中新收 731 件，同比上升 5.94%；执结 730 件，同比上升 0.69%；执行标的到位率 66.06%，居全省辖区法院第 1 位。基本解决执行难 4 项核心指标中前 3 项指标达到 100%，第 4 项执结率指标达到 97.07%，远远超出三个 90% 和一个 80% 的标准。受理涉党政机关特殊主体案件 12 件，实际执结 11 件，实际执结率 91.67%；申请执行总标的额 24.07 亿元，执行到位 21.67 亿元，执行到位率 90.03%，圆满完成辽宁高院“案件 90% 实际执结、案款 90% 执行到位”的目标任务。

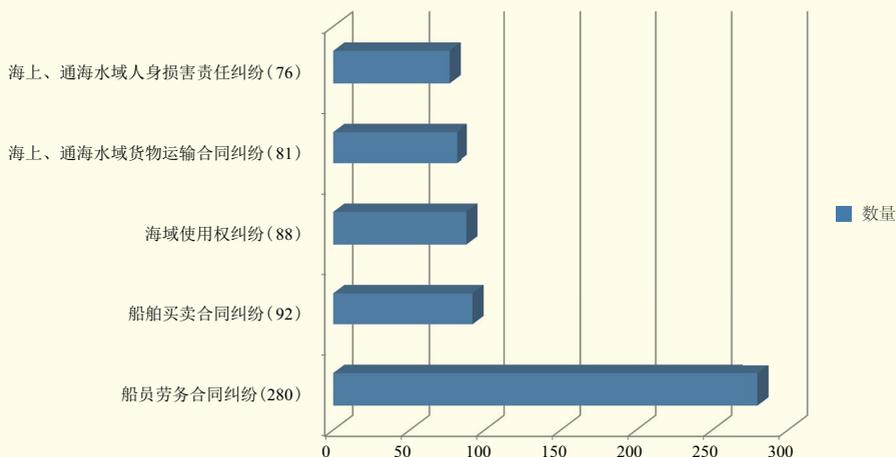
2020年各类案件受理数占比图



4. 派出法庭案件：五个派出法庭受理各类案件²1010 件，同比上升 16.63%。其中新收 975 件，同比上升 18.76%；旧存 35 件，同比下降 22.22%；审结 992 件，同比上升 19.37%；结案率 98.22%，同比上升 2.22 个百分点。改发率 1.78%，低于全院 0.37 个百分点；调解率 23.17%，低于全院 4.61 个百分点；撤诉率 30.74%，高于全院 7.45 个百分点。

2 包含民事案件、非诉保全审查案件和行政案件。

五个派出法庭受理海事海商案件 849 件，占全院海事海商案件总数 63.41%。其中新收 830 件，占全院海事海商案件 63.26%；审结 832 件，占全院海事海商案件 63.75%；涉案标的额 20.90 亿元。数量居前五位的新收海事海商案件共 617 件，具体类型如下：



5. 扣押、拍卖船舶情况：扣押船舶 50 艘，其中外国籍船舶、港澳台船舶 4 艘。拍卖船舶 38 艘，均为中国籍船舶。

6. 涉外涉港澳台案件情况：受理涉外案件 51 件、涉港澳台案件 15 件，占全院总数的 2.72%；审结涉外案件 47 件、涉港澳台案件 13 件。案件涉及阿联酋、百慕大、巴拿马、丹麦、德国、法国、冈比亚、韩国、马绍尔群岛、日本、瑞士、西班牙、希腊、新加坡、朝鲜、刚果（布）、利比里亚、印度和中国香港等近 20 个国家和地区。

（三）司法公开情况

依托中国庭审公开网直播庭审 1011 场，总观看数 656765 次。庭审直播率 66.97%，居全省中级法院第 2 位。2020 年作出的裁判文书在中国裁判文书网公布 3305 篇，裁判文书上网率居全省中级法院第 1 位。依托中国审判流程信息公开网实现审判流程信息公开，有效公开率 100%，居全省中级法院第 1 位。



二、工作亮点

（一）聚焦大局，服务海洋中心城市建设更有力

公正高效审理涉外案件 51 件、涉港澳台案件 15 件，平等保护中外当事人合法权益。组织“城市发展海事司法保障论坛”，向大连市委市政府市人大提供《关于大连海洋中心城市建设的几点思考》专题调研报告。发布中英双语海事审判白皮书和海事行政案件司法审查报告，总结、提炼“十大典型案例”“司法为民十佳案例”“涉一带一路典型案例”等，服务对外开放新格局。

（二）走深走实，法治化营商环境建设更有为

出台 4+9 工作方案，走访辽宁省内外 20 余家港航企业、政府职能部门、海岛渔村，召开专题座谈会 9 次，广泛听取意见建议。深入排查法治化营商环境突出问题 31 个，立查立改 27 个，建立长效机制长期推进 4 个。发布“诉讼服务十项承诺”，得到省市人大代表、新闻媒体广泛赞誉。法治化营商环境建设工作在全省法院工作会议作经验介绍。一起确认行政登记违法并赔偿案件入选辽宁省加强法治化营商环境建设典型案例。

（三）激发活力，执法办案更有效

结案率 97.45%，再创历史新高，居全国海事法院之首、辽宁省 17 家中级法院第 4 位；清理 6 个月以上未结案件 125 件，清结率达 93.28%。审判精品取得新突破，3 个案例入选全国海事审判的典型案例，3 个案例入选辽宁法院典型案例；在辽宁法院“五个一百”评选中，10 个案例入选“百个精品案例”，2 个庭审入选“百个优秀庭审”，2 篇文书入选“百个优秀裁判文书”。在辽宁法院“审判质量、效率、公信力提升年活动暨双激励平台”排名中，综合指标位居全省 17 家中级法院第 1 位。完善了解决执行难工作长效机制，执行质效排名位居辽宁三家专门法院第 1 位，

执行局荣立辽宁法院“基本解决执行难”工作集体二等功。

（四）便利“加码”，一站式体系建设更有心

完善“一站式”多元解纷机制建设，充分应用人民调解平台、中国海事审判系统开展线上查询或调解工作，促进多元解纷力量全方位互联。推行“速裁法官坐窗口、分调裁审一站式”的工作方式，稳固提升74项“一站式”质效指标，畅通线上线下诉服渠道，落实马上办、一次办、网上办，努力实现诉讼服务“全天候不打烊”，推进实现“三个不用找关系”。

（五）以人为本，智慧诉服更有情

倾心打造现代化诉讼服务中心，增设共产党员先锋岗、院长接待市场主体办公室、法官接待室、专业调解室、律师工作室等，挂牌运行“法律援助工作站”。率先向社会公布“诉讼服务十项承诺”，为群众提供诉讼风险评估、自助立案、自助缴费、跨域立案、文书自助打印等诉讼服务，全面提升群众司法体验。诉讼服务质效评估位列辽宁法院并列第一，我院荣获2020年“互联网+政务服务”先进单位，诉讼服务中心被评为全省标志性诉讼服务中心。我院被评为全国法院信息化建设先进单位，智慧法院建设工作在全省法院会议作经验介绍，在最高法院信息化专题会议作专题汇报，获最高法院周强院长充分肯定。

（六）素能过硬，队伍建设更有成

坚持革命化、正规化、专业化、职业化方向，努力锻造忠诚干净担当的司法铁军。一批年轻干部走上院领导、中层领导岗位。开展集政治学习、热点前瞻、实务交流为一体的“海法讲坛”6期。组建专业法官会议团队10个、审判白皮书起草团队、专题调研团队、外语翻译团队、文化建设小组。开展中日韩海事司法比较研究，学习热情、调研能力愈加强大。1个法庭被评为“全国法院先进集体”，1人被评为“全国法院办案标兵”，2人荣立个人二等功，1人入选辽宁法院“百名办案能手”，



1 人入选辽宁法院“百名基层尖兵”。全年 42 篇调研成果发表获奖，其中国家级 14 篇，同比增长 40%；省级 28 篇，同比增长 3 倍。3 项调研课题结项，1 项课题获得辽宁法院 2020 年度司法研究重点课题立项。

（七）阳光透明，司法公开更有料

审判流程信息有效公开率、庭审直播率、裁判文书上网率均位列辽宁中级法院前列。中英双语门户网站成为海事司法的亮丽窗口，微信公众号每日更新，阅读量、点赞量均居全国海事法院第 1 位。召开新闻发布会 4 场，在省级以上媒体和主流网站发布新闻稿件 154 篇，拍摄视频宣传片 10 部。在中国社会科学院“中国海事司法透明度指数评估”中排名第 5 位，创历史最好成绩。

三、问题建议

为充分发挥海事审判职能作用，营造良好营商环境，为经济社会发展提供有力海事司法保障，我院总结海事审判实践经验，对以下海事主体应对经营、管理或职业风险提出建议。

（一）对国内出口企业的建议

Forwarder's Certificate of Receipt（以下简称 FCR），是货运代理人签发的货运代理人收据，不是承运人保证据以交付货物的单证，一般使用于贸易术语 FCA 或 FOB。在 FCR 单证下，运输及租船订舱一般由国外货物买方负责，国内出口企业作为实际托运人将货物交给货运代理人（一般由国外货物买方指定），货运代理人签发 FCR 表明已收到货物，然后将货物交给承运人并取得提单或海运单。国内出口企业根据国际贸易合同的约定凭 FCR 到银行交单议付，FCR 则通过银行流转至国外收货人，而提单或海运单流转至货运代理人在国外目的港的代理，该目的港代理



凭提单或海运单从承运人处取得货物再交付于收货人。依照《最高人民法院关于审理海上货运代理纠纷案件若干问题的规定》第八条第一款的规定³，国内出口企业即实际托运人可以请求货运代理人交付其自承运人处取得的提单、海运单或者其他运输单证。如果国内出口企业并未请求货运代理人交付提单、海运单或者其他运输单证，而是直接接受了 FCR 并用于结汇，当其因国际贸易风险未收到货款时，其向法院起诉要求货运代理人承担货款损失，则不会被法院支持。⁴

建议：国内出口企业应审慎评估国际贸易中的交易风险，尽量选择贸易术语 CIF 或 CFR 进行交易，并自行委托货运代理人安排运输事宜。即使在综合考虑后由国外货物买方指定货运代理人安排运输，国内出口企业也应积极与国外货物买方协商采用提单作为运输和议付单据。同时，国内出口企业应充分了解 FCR 的特点，知道其不具有承运人保证据以交付货物的功能，并依照《中华人民共和国海商法》第七十二条第一款⁵和《最高人民法院关于审理海上货运代理纠纷案件若干问题的规定》第八条第一款的规定，采取适当方式向承运人表明要求签发提单或向货运代理人表明要求交付提单，在要求受阻时向海事法院申请海事强制令，主动行使单证签发或交付请求权，以规避贸易风险。

（二）对保险公司的建议

在我院审理的海上保险合同纠纷中，部分保险公司因经营管理过失

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- 3 《最高人民法院关于审理海上货运代理纠纷案件若干问题的规定》第八条第一款：“货运代理企业接受契约托运人的委托办理订舱事务，同时接受实际托运人的委托向承运人交付货物，实际托运人请求货运代理企业交付其取得的提单、海运单或者其他运输单证的，人民法院应予支持。”
 - 4 例如（2019）辽72民初980号沈阳佳宁塑料机械自动化有限公司与天津泛艺国际货运代理服务有限公司大连分公司海上货运代理合同纠纷一案。
 - 5 《中华人民共和国海商法》第七十二条第一款：“货物由承运人接收或者装船后，应托运人的要求，承运人应当签发提单。”



引发诉累，降低了保险公司理赔效率，增加了经营成本。保险代理人⁶受保险公司委托，在办理保险业务过程中因过错导致本应录入被保险人名单的被保险人信息未被录入，保险事故发生后保险公司拒绝支付保险赔偿，被保险人（或其受益人）提起诉讼，法院判决由保险公司对保险代理人的过失承担民事责任。⁷ 船员从事海上工作充满风险，许多船舶经营人为其船上固定数额的船员投保团体人身意外伤害保险，在保险期间因船员具有流动性，被保险人变更，包括被保险人增加、减少、替换等时有发生。在发生保险合同约定的保险事故后，保险公司因无法准确判断发生保险事故的船员是否在被保险人范围内，不敢支付保险赔偿，直至法院判决。⁸ 投保人以其所有的内河船舶向保险公司投保内河船舶险时，保险公司未在保险单上记载保险责任范围，也未要求投保人签署投保单或向其出示保险条款。在内河船舶超出其核定的内河航区航行发生事故后，投保人与保险公司就“沿海”是否属于保险责任范围发生争议，法院确认超航区航行不属于保险公司的保险责任范围，保险公司不承担保险责任。⁹

建议：保险公司应加强对保险代理人的监督管理，严格审查保险代理人任职资格，切实规范保险代理人的经营行为，谨慎审核保险代理人填写的保险单、投保人资格信息、保险标的、保险金额等情况，避免因

6 《保险代理人监管规定》（中国银行保险监督管理委员会令2020年第11号）第二条第一款：“本规定所称保险代理人是指根据保险公司的委托，向保险公司收取佣金，在保险公司授权的范围内代为办理保险业务的机构或者个人，包括保险专业代理机构、保险兼业代理机构及个人保险代理人。”

7 例如（2019）辽72民初982号周某等与华泰财产保险有限公司锦州中心支公司、第三人丛某海上保险合同纠纷一案。

8 例如（2018）辽72民初268号陈某等与平安养老保险股份有限公司辽宁分公司海上保险合同纠纷一案。

9 例如（2019）辽72民初22号郑某与中国人民财产保险股份有限公司淮滨支公司、第三人河南淮滨农村商业银行股份有限公司海上保险合同纠纷一案。



保险代理人的过失而遭受损失。¹⁰ 保险公司在承保团体人身意外伤害保险时，应向投保人明示该险种在保险期间内可变更被保险人，详细准确告知被保险人变更的申请流程及时间要求，在投保人提出变更被保险人申请后，保险公司应及时审核，如审核通过，及时对保险合同进行批改并对被保险人名单进行变更。¹¹ 保险公司在承保内河船舶险时，应将投保人与投保人合意的保险责任范围明确记载于投保单和保险单上，并向投保人明确告知保险责任范围，避免因双方对保险责任范围产生争议引发诉累。

（三）对远洋船员的建议

审判实践中，从事远洋作业的船员所服务的船舶为外轮时，有的船员与国内派遣单位签订劳动合同，有的船员直接与外国船舶所有人签订劳务合同，前者船员与派遣单位成立劳动合同关系，适用《中华人民共和国合同法》，船员的权益通常能够得到充分全面的保护；后者船员与外国船舶所有人成立劳务合同关系，不属于上述法律的适用范围¹²，只能依照《中华人民共和国涉外民事关系法律适用法》第四十一条¹³以合同约定的法律适用条款¹⁴确定适用的法律，除了送达、执行经常遇到困难外，

10 《中华人民共和国民法典》第一百六十二条：“代理人在代理权限内，以被代理人名义实施的民事法律行为，对被代理人发生效力。”

11 《中华人民共和国保险法》第二十条：“投保人和保险人可以协商变更合同内容。变更保险合同的，应当由保险人在保险单或者其他保险凭证上批注或者附贴批单，或者由投保人和保险人订立变更的书面协议。”

12 《中华人民共和国合同法》第二条：“中华人民共和国境内的企业、个体经济组织、民办非企业单位等组织（以下称用人单位）与劳动者建立劳动关系，订立、履行、变更、解除或者终止劳动合同，适用本法。”

13 《中华人民共和国涉外民事关系法律适用法》第四十一条：“当事人可以协议选择合同适用的法律。当事人没有选择的，适用履行义务最能体现该合同特征的一方当事人经常居所地法律或者其他与该合同有最密切联系的法律。”

14 如无此约定，当事人可依照《最高人民法院关于审理涉船员纠纷案件若干问题的规定》第十七条第二款“船员与船舶所有人之间的劳务合同，当事人没有选择应适用的法律，当事人主张适用劳务派出地、船舶所有人主营业地、船旗国法律的，应予支持”的规定，主张法律适用。



亦不如适用《中华人民共和国劳动合同法》时对船员权利保护得全面充分。¹⁵ 关于船舶优先权，依照《最高人民法院关于审理涉船员纠纷案件若干问题的规定》第六条¹⁶的规定，船舶优先权的确认和船舶优先权的行使可以分离。¹⁷ 船舶优先权行使期限为除斥期间，自优先权产生之日起一年不行使即消灭。¹⁸ 审判实践中有船员超过优先权产生之日起一年请求确认优先权不被法院支持的案件。¹⁹

建议：从事远洋作业的船员应优先选择国内船舶所有人、船舶经营人或国内派遣单位签订劳动合同成立劳动合同关系，适用《中华人民共和国劳动合同法》，以全面保护自身权益。船员在合同相对方拖欠具有船舶优先权的工资、其他劳动报酬、船员遣返费用和社会保险费用时²⁰，即使没有找到产生海事请求的船舶，也应在优先权产生之日起一年内尽快通过诉讼程序请求确认对该船舶享有优先权。在确认之后，船员还应在上述一年期限内积极行使船舶优先权，使其债权得到充分保障，避免船舶优先权因一年期限届满而消灭。

（四）对渔船事故调查机关的建议

15 例如（2020）辽72民初601号石某与嘉德海运有限公司等船员劳务合同纠纷一案。

16 《最高人民法院关于审理涉船员纠纷案件若干问题的规定》第六条：“具有船舶优先权的海事请求，船员未依照《中华人民共和国海商法》第二十八条的规定请求扣押产生船舶优先权的船舶，仅请求确认其在一定期限内对该产生船舶优先权的船舶享有优先权的，应予支持。前款规定的期限自优先权产生之日起以一年为限。”

17 例如（2020）辽72民初1189号张某与联太船务有限公司（Joint Pacific Shipping Co., LTD）船员劳务合同纠纷一案。

18 《中华人民共和国海商法》第二十九条第一款：“船舶优先权，除本法第二十六条规定的外，因下列原因之一而消灭：（一）具有船舶优先权的海事请求，自优先权产生之日起满一年不行使。……”

19 例如（2020）辽72民初1043号刘某与石某确认船舶优先权纠纷一案。

20 《中华人民共和国海商法》第二十二条第一款：“下列各项海事请求具有船舶优先权：（一）船长、船员和在船上工作的其他在编人员根据劳动法律、行政法规或者劳动合同所产生的工资、其他劳动报酬、船员遣返费用和社会保险费用的给付请求。……”

近几年，渔船发生水上安全生产事故后，因渔船事故调查机关未依法履职而提起的相关行政诉讼屡见不鲜。矛盾主要集中在渔船事故调查机关未依法作出事故调查报告，或者未充分行使调查职能，作出的调查报告内容不全面、不完整，或者未向当事人送达事故结案报告或送达不及时。²¹ 渔船事故调查机关未依法履职，既不利于与事故相关的后续民事纠纷处理，也不利于树立行政机关依法行政的良好形象。

建议：渔船事故调查机关应全面掌握《渔业船舶水上安全事故报告和调查处理规定》中列明的有权开展的事故调查工作形式及事故调查报告应当包括的内容，依法行使调查职能²²，对事故调查报告应当包括的内容进行全面调查，形成完整、详实的事故调查报告²³，并及时²⁴向当事人送达涵盖事故调查报告内容的事故结案报告。这不仅能够使当事人对报告结果信服，更能体现出行政机关在处理事故时恪尽职守、认真严谨、诚信公正的工作态度。

21 例如（2019）辽72行初36号聂某与营口市农业农村综合发展服务中心不履行法定职责一案。

22 《渔业船舶水上安全事故报告和调查处理规定》（农业部令[2012]第9号）第五条第一款：“县级以上人民政府渔业行政主管部门及其所属的渔政渔港监督管理机构（以下统称为渔船事故调查机关）负责渔业船舶水上安全事故的报告。”

23 《渔业船舶水上安全事故报告和调查处理规定》（农业部令[2012]第9号）第二十二条：“水上安全事故调查报告应当包括以下内容：（一）船舶、设施概况和主要性能数据；（二）船舶、设施所有人或经营人名称、地址和联系方式；（三）事故发生时间、地点、经过、气象、水域、损失等情况；（四）事故发生原因、类型和性质；（五）救助及善后处理情况；（六）事故责任的认定；（七）要求当事人采取的整改措施；（八）处理意见或建议。”

24 《渔业船舶水上安全事故报告和调查处理规定》（农业部令[2012]第9号）第二十一条：“渔船事故调查机关应当自接到事故报告之日起六十日内制作完成水上安全事故调查报告。特殊情况下，经上一级渔船事故调查机关批准，可以延长事故调查报告完成期限，但延长期限不得超过六十日。检验或鉴定所需时间不计入事故调查期限。”



四、典型案例

（一）对合同履行造成实质性影响的期间，计入受新冠肺炎疫情不可抗力影响的合同履行期间

原告唐山曹妃甸区祥坤海运有限公司（以下简称祥坤海运公司）与被告大连船舶重工集团有限公司（以下简称大船重工公司）船舶租用合同纠纷案²⁵中，大船重工公司租用祥坤海运公司的浮吊船进行水上吊装作业，约定“作业时间自2019年10月16日至2020年1月24日；1月25日到2月8日为优惠期，不收取任何费用；超期使用，收取滞期费”。2019年10月16日至2020年1月23日，祥坤海运公司完成了大部分吊装作业。2020年1月24日至1月30日，大船重工公司无吊装计划。受新冠肺炎疫情影响，大连市新型冠状病毒感染的肺炎疫情防控指挥部于2020年1月31日发布3号令：市内各类企业不早于2020年2月9日24时前复工。祥坤海运公司与大船重工公司于2月10日复工。后经协商，祥坤海运公司自2020年2月11日至2月24日，完成剩余吊装作业。祥坤海运公司向大船重工公司主张2020年2月9日至2月24日期间的滞留滞期费。法院认为，新冠肺炎疫情被认定为突发公共卫生事件后，各级政府及有关部门为保护人民群众身体健康和生命安全而采取的防控措施属于不可抗力。2020年1月25日至1月30日期间属于春节法定节假日，大船重工公司在该假期未安排祥坤海运公司进行吊装作业，亦未举证证明其在该假期安排了与该作业相关的准备工作。该期间虽属于受新冠肺炎疫情影响的不可抗力期间，但对合同的履行未造成实质性影响，不计入受新冠肺炎疫情不可抗力影响的合同履行期间。受新冠肺炎疫情不可抗力影响的合同履行期间为2020年1月31日至2月8日，故判令大船

25 （2020）辽72民初403号。



重工公司向祥坤海运公司给付滞留滞期费 1133600 元及其利息。

（二）已向海关申报进口货物的主体丧失收货人身份，相关利害关系人有权要求其撤销报关

原告卡马农产公司（Cocamar Cooperativa Agroindustrial，以下简称卡马公司）与被告辽宁鑫石贸易有限公司（以下简称鑫石公司）排除妨害纠纷案²⁶中，卡马公司作为托运人从巴西托运大豆，承运人长荣公司签发了一式三份正本提单，收货人记载为凭鑫石公司指示。货物抵达大连港后，鑫石公司凭提单复印件以收货人身份向中国海关申报入关。其后，卡马公司向长荣公司交还上述全套正本提单，长荣公司应卡马公司要求变更收货人并重新出具了提单。因鑫石公司已经报关，导致第二套提单的合法持有人无法报关继而不能提货。法院认为，涉案大豆系进口货物，报关是提货的必经程序。鑫石公司始终未持有正本提单，无权提取上述货物。卡马公司、长荣公司有权协商变更运输合同项下的收货人等事宜，第二套提单是现行有效的提单。鑫石公司已不是提单记载的收货人，其向海关递交的报关手续妨碍了卡马公司依法实现提单项下的权利，故判令鑫石公司撤销报关。

（三）未签发多式联运单证的多式联运经营人，仅对托运人承担全程运输责任

原告国泰世纪产物保险股份有限公司（以下简称国泰保险公司）与被告大木国际物流集团有限公司、被告辽宁新大木物流有限公司（以下简称新大木公司）海上货物运输合同纠纷案²⁷中，新大木公司与案外人大连华锐重工国际贸易有限公司（以下简称华锐公司）签订运输合同，负

26 一审（2019）辽72民初947号，二审（2020）辽民终257号。

27 一审（2017）辽72民初885号，二审（2020）辽民终269号。



责完成货物从中国工厂到越南山阳港的内陆运输、出口报关报验至目的港码头舱底交货等义务。新大木公司从案外人泰荣国际海运公司处航次租赁“瀛富”轮运输上述货物，船代公司代船长签发了提单。“瀛富”轮抵达目的港时，部分货物被发现受损。货物保险人国泰保险公司向提单收货人台塑河静公司支付保险赔偿后，取得代位请求赔偿的权利。法院认为，新大木公司与华锐公司之间成立《中华人民共和国海商法》下的多式联运合同法律关系。新大木公司作为多式联运经营人未签发任何形式的多式联运单证，仅应对其合同相对方华锐公司承担全程运输责任。国泰保险公司未举证证明案涉提单系新大木公司授权或由船代公司代表新大木公司签发，新大木公司与台塑河静公司之间不存在以提单证明的海上货物运输合同关系，故判决驳回国泰保险公司的全部诉讼请求。

（四）请求人提供充分有效担保情况下，被请求人主张货物留置权不影响海事强制令的作出和执行

请求人厦门建发物产有限公司（以下简称建发公司）申请被请求人马士基有限公司（Maersk A/S，以下简称马士基公司）强制放货案²⁸中，马士基公司在法院组织的听证程序中认为其未予交货并行使货物留置权的行为于法有据，并未违反海上货物运输合同的约定。法院认为，被请求人存在违反法律规定或者合同约定的行为是法院作出海事强制令的法定条件之一。马士基公司作为海上货物运输的承运人，负有向提单载明的收货人或提单持有人交付货物的义务，其未予交货的行为违反了该项义务。此外，留置货物的目的在于担保债权的实现。马士基公司虽然主张对该货物行使留置权，但提单记载的收货人建发公司已提供充分有效的银行保函作为担保以换取货物的释放。该担保既可以保障承运人债权利益的实现，又避免了货物损失和费用的进一步扩大，故法院依法作出

28 （2020）辽72行保2号。



海事强制令，要求马士基公司向建发公司放货。

（五）未能完成委托事务的国际货运代理企业，不能举证证明存在不可归责于己方的事由，无权要求委托人给付报酬

原告烟台安信国际物流有限公司（以下简称安信公司）与被告大连锦程物流供应链有限公司（以下简称锦程公司）海上货运代理合同纠纷案²⁹中，安信公司委托锦程公司代理五批货物自中国大连至新加坡的出口海运订舱（BBK分体吊装）、堆存、装箱、捆扎、加固及进港运输等综合事宜。锦程公司受托后在安排货物进港过程中受阻导致货物未能如期出运，但仍向安信公司索要了报酬。安信公司认为货物进港受阻系锦程公司未能对案涉特种集装箱采用BBK分体吊装方式进港所致，锦程公司认为系天气原因，但双方均未能提供充分证据予以证明。法院认为，依照《中华人民共和国合同法》第四百零五条“因不可归责于受托人的事由，委托合同解除或者委托事务不能完成的，委托人应当向受托人支付相应的报酬”的规定，锦程公司作为受托人对货物未能出运系由于不可归责于己方的事由应当承担举证责任而未能举证，其收取安信公司的报酬于法无据，应予退还。

（六）发包人对建设工程施工分包合同的无效存在过错，导致其出具的担保函亦归属无效，发包人应当依法承担相应工程款的连带给付责任

原告宁波涌溢海洋工程有限公司（以下简称涌溢公司）与被告大连航晟港口建设工程有限公司（以下简称航晟公司）、被告大连慧昌码头有限公司（以下简称慧昌公司）港口疏浚合同纠纷案³⁰中，慧昌公司将港口

29 一审（2020）辽72民初542号，二审（2020）辽民终1244号。

30 一审（2018）辽72民初7号，二审（2020）辽民终338号。



泊位建设工程发包给无港口建设施工资质的航晟公司，航晟公司又将港池疏浚工程分包给无施工资质的涌溢公司，上述合同均属无效。虽然航晟公司与涌溢公司间的合同在该工程完工前已解除，但航晟公司认可已完成工程的质量，故法院判令其应向涌溢公司给付此部分工程款。慧昌公司就工程款的支付向涌溢公司出具了担保函，因航晟公司与涌溢公司之间的合同无效，该担保函亦归于无效。但慧昌公司明知航晟公司并无相关施工资质，仍将港口泊位建设工程发包给航晟公司，并确认航晟公司将港池疏浚工程分包给涌溢公司，属于明知主合同无效仍为之提供担保的情形，其对担保合同无效具有过错。依照《最高人民法院关于适用〈中华人民共和国担保法〉若干问题的解释》第八条的规定，法院判令慧昌公司就前述工程款的三分之一承担连带给付责任。

（七）债权人与债务人协议变更船舶营运借款的主合同应取得保证人书面同意，否则保证人不再承担保证责任

原告中国银行股份有限公司丹东分行（以下简称中行丹东分行）与被告东港市金生水渔业捕捞有限公司（以下简称金生水公司）、被告丹东丰奥船业有限公司（以下简称丰奥公司）、被告宋某、被告张某船舶营运借款合同纠纷案³¹中，保证人丰奥公司的保证期间依约定截止至船舶办理抵押登记之日，因贷款人中行丹东分行与借款人金生水公司未为《借款合同》约定的船舶办理抵押登记，保证期间因此而不合理延长的后果不应由丰奥公司承担。而且，中行丹东分行未按照《借款合同》的约定，将贷款支付给符合合同约定用途的借款人的交易对方，亦是《借款合同》保证人的丰奥公司，变更了该合同关于贷款发放对象的约定。依照《中华人民共和国担保法》第二十四条“债权人与债务人协议变更主合同的，应当取得保证人书面同意，未经保证人书面同意的，保证人不再承担保

31 （2020）辽72民初182号。



证责任”的规定，法院判决驳回中行丹东分行要求丰奥公司承担连带责任的诉讼请求。

（八）购买游艇的消费者受《中华人民共和国消费者权益保护法》保护，经营者对自身欺诈行为应承担惩罚性赔偿责任

原告于某与被告大连慈航游艇有限公司（以下简称慈航公司）、被告威海市金运游艇有限公司（以下简称金运公司）船舶买卖合同纠纷一案³²，于某向销售者慈航公司订购新建游艇一艘，约定由慈航公司负责办理游艇的船舶检验手续，此后慈航公司交付了由生产商金运公司建造的一艘同型号游艇及船舶检验手续。在对游艇使用发生船底断裂一事的协商处理过程中，于某发现游艇出厂和入籍的两地船舶检验手续存在不符之处，认为慈航公司与金运公司存在销售欺诈行为，故请求撤销游艇销售合同，并要求慈航公司与金运公司共同退还购船款18万元，共同赔偿损失36万元。法院认为，慈航公司将未经检验合格的游艇作为销售合同的标的物进行了交付，未证明其与金运公司有过订购新建游艇、支付价款、运输新建游艇至大连等相关行为，推定慈航公司订立合同时存在隐瞒游艇真实情况的故意，构成欺诈行为。该游艇的设计和用途为私人使用，属于《中华人民共和国消费者权益保护法》第二条规定的商品范围，应受该法律调整，故判决撤销于某与慈航公司签订的游艇销售合同，判令慈航公司返还于某购船款并承担惩罚性赔偿款，驳回于某对金运公司的诉讼请求。

（九）在没有相反证据足以推翻的情况下，主管机关作出的海上事故报告可以作为法院认定案件事实的证据，但当事人的责任应由法院审查事实后综合判定

32 一审（2020）辽72民初64号，二审（2020）辽民终1190号。



原告李某、原告魏某、原告刘某与被告徐某海上人身损害责任纠纷案³³中，徐某在大连长兴岛海滨浴场雇佣桑某驾驶其所有的摩托艇，收取费用带游客体验摩托艇海上航行。桑某驾驶摩托艇在海里骑行过程中刚碰正在游泳的刘某某致其头部受伤，经抢救无效死亡。依照《最高人民法院关于审理人身损害赔偿案件适用法律若干问题的解释》第九条第一款关于雇主责任的规定，桑某对事故负有责任，徐某作为雇主承担侵权责任。另依照《中华人民共和国侵权责任法》第二十六条“被侵权人对损害的发生也有过错的，可以减轻侵权人的责任”的规定，虽然主管机关作出的海上事故报告认为刘某某作为游客并无明显过错，但法院认为，在海上有数台摩托艇行驶的情况下，刘某某应当知道在该海域游泳具有一定危险性并采取必要的保护和提醒措施。刘某某没有采取必要的提醒措施，对事故的发生也具有一定过错，酌定减轻侵权人10%的责任，判决徐某承担90%的侵权责任。

（十）衡量“填海造地”应从实施的行为及客观结果两方面进行考量，不应仅以海面呈现状态作为认定标准

原告邹某与被告大连金普新区农业农村局撤销行政处罚决定案³⁴中，邹某认为其于2015年实施的部分用海行为仅是对历史形成的垃圾堆积区进行平整，测绘报告亦表明该区域在2014年已形成堆积区，因此该用海行为不应认定为填海造地。金普新区农业农村局认为依据2009年公布的海岸线修订数据，堆积区属于海域范围，现已形成土地，故邹某的用海行为应认定为填海造地。法院认为，根据海域管理的相关规定，“填海造地”是指筑堤围割海域填成能形成有效岸线的土地，完全改变海域自然属性的用海。填海造地的衡量标准应当是行为上实施了筑堤围割海域填

33 （2020）辽72民初334号。

34 （2019）辽72行初8号。



成土地的行为，结果上形成了新的稳定的海陆分界线。邹某并未实施筑堤围割海域的行为，新的稳定的海陆分界线在其用海之前也已形成，邹某在堆积区的平整施工行为不应认定为填海造地行为，故判决撤销大连金普新区农业农村局的行政处罚决定。

（十一）秉持善意文明执行理念，将强制执行措施与调解手段相结合，为企业发展提供优质司法服务

辽宁高院指定我院执行的申请执行人中国东方资产管理股份有限公司辽宁省分公司（以下简称东方资产辽宁公司）申请执行被执行人中国中海直有限责任公司（以下简称中海直公司）担保合同追偿纠纷案³⁵中，中海直公司自1999年末起欠付东方资产辽宁公司2288514.57美元及其利息。法院立案后立刻对中海直公司的银行账户进行全面查控，冻结该公司账户下的人民币70余万元。根据东方资产辽宁公司提供的财产线索，法院发现中海直公司作为大股东持有上市公司股票，直接变卖股票可以结案，但中海直公司请求暂缓执行。为避免给企业经营发展造成不可估量的负面影响，法院没有僵化实施变卖措施，而是积极组织双方就债权债务本息反复计算和磋商。最终，双方达成执行和解，中海直公司主动履行欠款本息合计人民币4700余万元。该案执结后，上市公司的股票增发配售按期进行，未受到不利影响。

（十二）不动产在租赁前已经抵押，法院在征得抵押权人同意后拍卖不动产并不影响抵押权的实现，无需征得承租人或次承租人的同意

原告胡某与被告王某、被告王某某、被告郑某、第三人沈阳金属材料总厂、第三人周某、第三人沈阳佳点物流有限公司、第三人曲某执行

35 （2020）辽72执275号。



异议之诉案³⁶中，胡某作为案涉不动产的次承租人，以法院事先未征得其同意、未将租赁权先行去除即进行拍卖的行为违法为由提出执行异议，主张己方对不动产享有合法有效的租赁权而拒绝履行法院要求其腾退不动产的执行行为。法院认为，案涉不动产抵押在先，租赁在后，法院在征得抵押权人同意后拍卖该不动产，对抵押权人而言是行使抵押权以实现债务清偿的具体方式。拍卖所得价款优先清偿抵押权人的债权，租赁权本身并未对在先的抵押权实现造成不利影响，不适用《最高人民法院关于人民法院民事执行中拍卖、变卖财产的规定》关于租赁权“继续存在于拍卖财产上，对在先的担保物权或者其他优先受偿权的实现有影响的，人民法院应当依法将其除去后进行拍卖”的规定，故拍卖无需征得次承租人的同意并去除承租权后再进行。法院拍卖不动产的执行行为并无不当，判决驳回胡某的诉讼请求。

结束语

随着海洋经济的快速发展，经略海洋已成为国家治理体系的有机组成部分。海事法院30多年的发展实践充分表明，海事法院不仅是审理海事海商案件的专门法院，更是在“两个一百年”的历史交汇期为促进国家战略实施、推动构建海洋命运共同体提供坚实司法保障的专门法院。实干书写开局答卷，奋斗开创海法未来，大连海事法院将始终坚持百姓有所呼、司法有所应，从服务全局站位明职责、担使命、抓落实，举海事司法之力起好步、护好航、开好局，用温馨智慧服务保民生、解民忧、暖民心，以过硬作风强担当、激活力、促一流，奋力摁下“一流海事法院”建设加速键，努力绘就一流建设壮美画卷。

36 (2020)辽72民初527号。

Foreword

With the continuous advancement of Maritime Power Strategy, Belt and Road Initiative, Pilot Free Trade Zone and Construction of International Maritime Judicial Center, the international credibility and influence of China's foreign-related maritime adjudication has been increasingly enhanced, with a more positive and active attitude to integrate into the big picture, more quality and efficient judicial services to serve the national strategy and more pragmatic and fairer measures to safeguard the national strategy. Maritime courts need to grasp new requirements, assume new missions, and take practical actions to promote maritime justice to achieve new accomplishments. The giant ship of maritime adjudication will also follow the direction and channel guided by General Secretary Xi Jinping Thought on the Rule of Law, with the goal of letting the people feel fairness and justice in every judicial case, speed up the construction of international maritime judicial center, brave the wind and waves to open a new chapter, and set sail again with strong will and steady behavior.

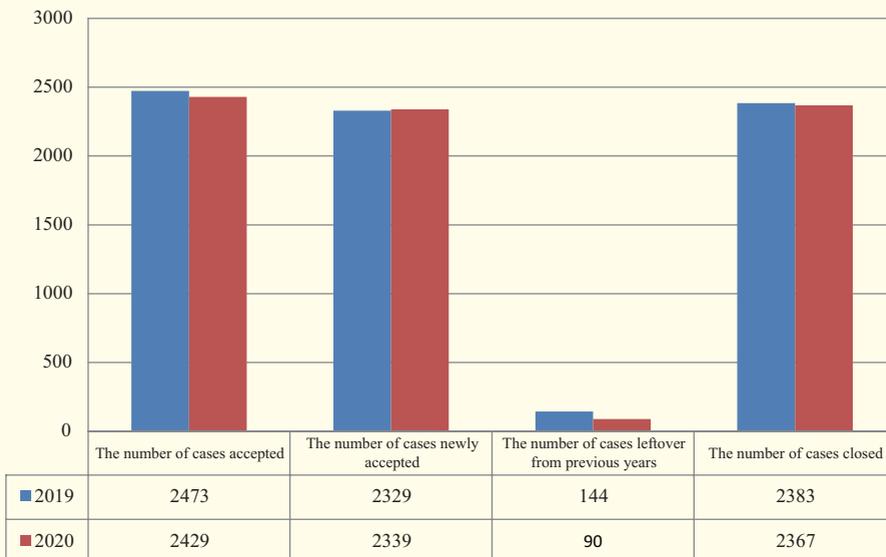
In 2020, Dalian Maritime Court fully implemented Xi Jinping Thought on the Rule of Law, consciously practiced the new development concept, gave full play to the role of maritime adjudication, made every effort to create a market-oriented, law-based and international business environment, vigorously promoted reform and innovation, and accelerated the construction of "first-class maritime court", and strove to promote various tasks to be in the forefront of Liaoning courts. The various tasks progressed steadily and continued to progress, providing powerful maritime judicial services and guarantees for the overall promotion of pandemic prevention and control and high-quality economic and social development.

I. Basic information

1. General situation

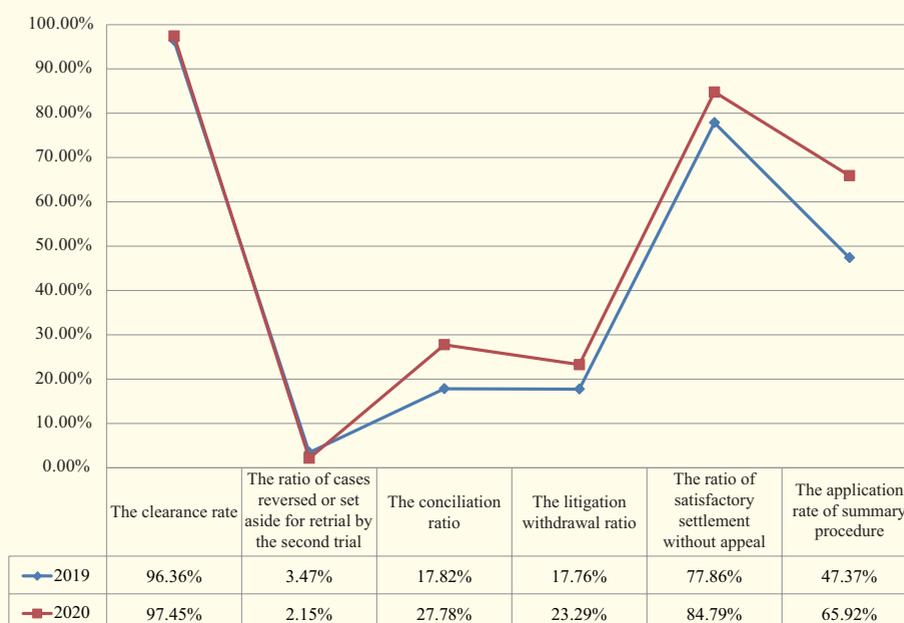
1.1 The numbers of accepted and closed cases were basically the same as last year. In 2020, the Court accepted 2,429 cases of various types, a decrease of 1.78% over last year. Among these cases, 2,339 cases were newly accepted, an increase of 0.43% over last year; 90 cases were left over from previous years, a decrease of 37.5% over last year; 2,367 cases were closed, a decrease of 0.67% over last year; the clearance rate reached 97.45%, an increase of 1.09 percent points over last year, ranking the first among the eleven maritime courts in China and the fourth among the intermediate courts in Liaoning Province.

The comparison chart of the numbers of cases newly accepted, closed, left over from previous years between 2020 and 2019



1.2 Major quality and effectiveness targets were well accomplished. The ratio of cases reversed or set aside for retrial by the second trial was 2.15%, a decrease of 1.32 percent points over last year, ranking the first among the intermediate courts in Liaoning Province; the conciliation ratio was 27.78%, an increase of 9.96 percent points over last year; the litigation withdrawal ratio was 23.29%, an increase of 5.53 percent points over last year; the question answering ratio after judgment was 100%, ranking the first among the intermediate courts in Liaoning Province; the ratio of satisfactory settlement without appeal was 84.79%, an increase of 6.93 percent points over last year; the application ratio of summary procedure was 65.92%, an increase of 18.55 percent points over last year; 125 open cases over 6 months were cleared up, and the clearance ratio reached 93.28%.

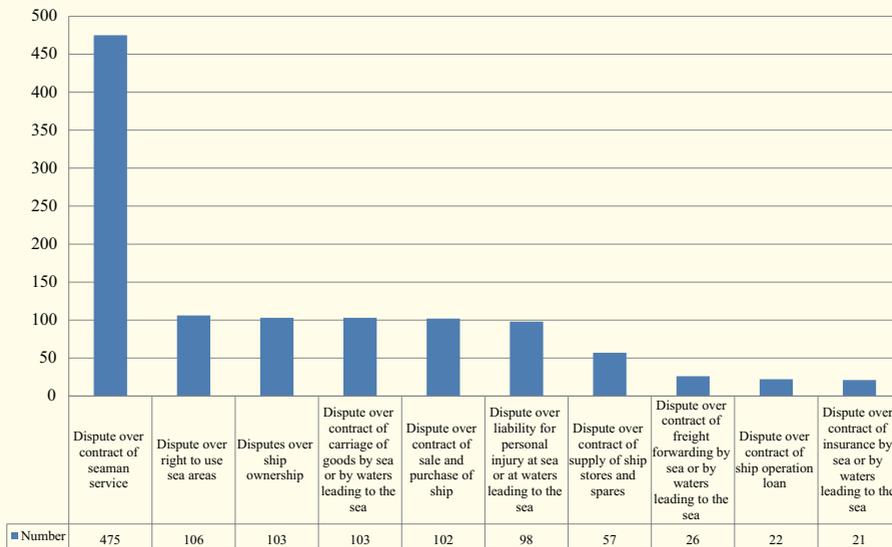
The comparison chart of the major quality & effectiveness targets between 2020 and 2019



2. Case classification

2.1 Civil cases data¹: 1,507 cases were accepted, an increase of 6.28% over last year. Among these cases, 1,451 cases were newly accepted, an increase of 8.2% over last year; 1,471 cases were closed, an increase of 8% over last year; the clearance rate reached 97.61%, an increase of 1.56 percent points over last year; the subject amount of the cases was RMB 2.966 billion, a decrease of RMB 3.805 billion over last year.

Among these civil cases, the Court accepted 1,339 admiralty and maritime cases, an increase of 2.45% over last year. Among the cases, 1,312 cases were newly accepted, an increase of 6.41% over last year; 1,305 cases were closed, an increase of 4.23% over last year; the clearance rate was 97.46%, an increase of 1.67 percent points over last year. Of the new contentious cases accepted, the number of the top 10 admiralty and maritime cases reached 1,113. The types of the above cases were as follows:

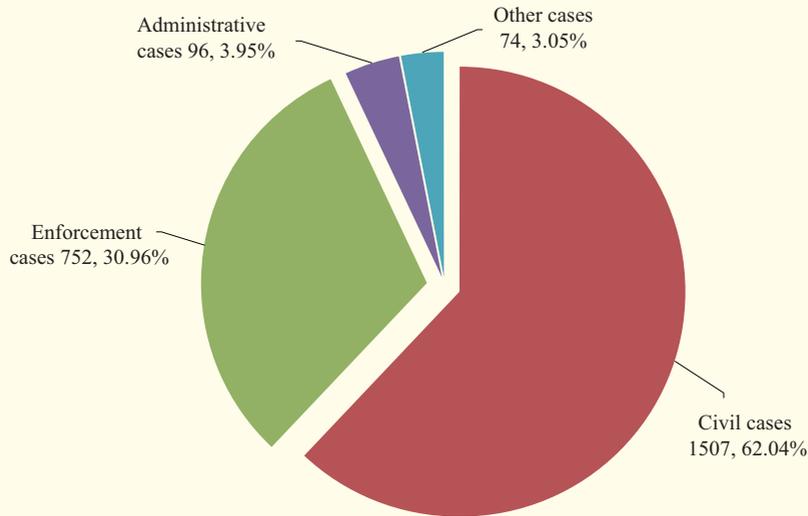


1 Including maritime cases and maritime special procedure cases, excluding non-litigation preservation review cases, state compensation cases, judicial aid cases, judicial assistance cases and enforcement cases.

2.2 Administrative cases data: The Court accepted 96 maritime administrative cases, a decrease of 48.11% over last year. Among the cases, 83 cases were newly accepted, a decrease of 54.14% over last year; 93 cases were closed, a decrease of 46.55% over last year; the clearance rate was 96.88%, an increase of 2.83 percent points over last year; the subject amount of the cases was RMB 138 million, a decrease of RMB 285 million over last year.

2.3 Enforcement cases data: 752 cases were accepted, an increase of 0.8% over last year. Among the cases, 731 cases were newly accepted, an increase of 5.94% over last year; 730 cases were closed, an increase of 0.69% over last year; the arrival rate of enforcement subject was 66.06%, ranking the first among Liaoning provincial courts. The first three among the “four core targets” of “Basically Solving the Difficulties in Enforcement Work” achieved 100% and the fourth achieved 97.07% in clearance rate, far exceeding the criteria of three 90% and one 80%. 12 cases involving the Party and government organs as special subjects were accepted, and 11 cases were actually closed, with an actual clearance rate of 91.67%; the total amount of application for enforcement was RMB 2.407 billion, with arrival of RMB 2.167 billion, and the arrival rate of enforcement was 90.03%, which successfully completed the target of “90% of the cases are actually executed and 90% of the money is in place” made by Liaoning High People’s Court.

The proportion chart of cases accepted in 2020

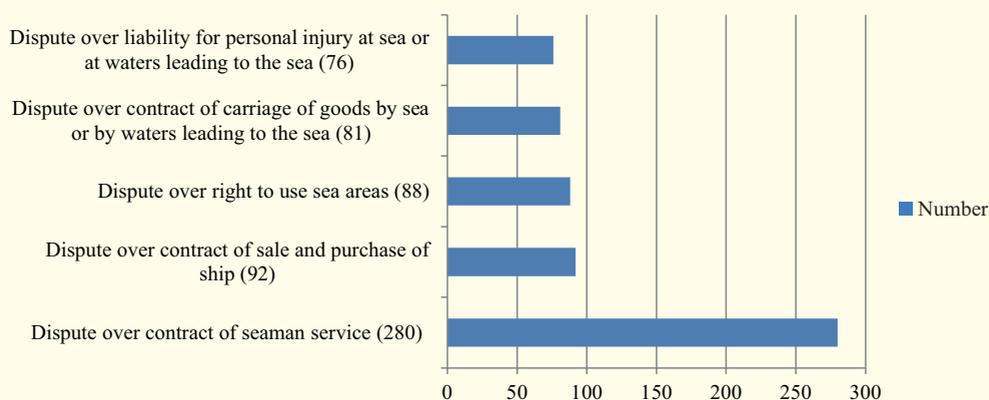


2.4 Dispatched tribunal cases data: Five dispatched tribunals accepted 1,010 cases of various types², an increase of 16.63% over last year. Among the cases, 975 cases were newly accepted, an increase of 18.76% over last year; 35 cases were left over from previous years, a decrease of 22.22% over last year; 992 cases were closed, an increase of 19.37% over last year; the clearance rate reached 98.22%, an increase of 2.22 percent points over last year. The ratio of cases reversed or set aside for retrial by the second trial was 1.78%, 0.37 percent point lower than the Court's data; the conciliation ratio was 23.17%, 4.61 percent points lower than the Court's data; the litigation withdrawal ratio was 30.74%, 7.45 percent point higher than the Court's data.

Five dispatched tribunals accepted 849 admiralty and maritime cases, accounting for 63.41% of the total number of admiralty and maritime cases of the Court.

² Including civil cases, non-litigation preservation review cases, and administrative cases.

Among the cases, 830 cases were newly accepted, accounting for 63.26% of the total admiralty and maritime cases of the Court; 832 cases were closed, accounting for 63.75% of the total admiralty and maritime cases of the Court; the subject amount of the cases was RMB 2.09 billion. The number of the top 5 admiralty and maritime cases reached 617. The types of the above cases were as follows:



2.5 Arrest and auction of ships data: 50 ships were arrested, of which 4 involved foreign, Hong Kong, Macao and Taiwan affairs. 38 ships were auctioned, all of which were Chinese.

2.6 Cases involving foreign, Hong Kong, Macao and Taiwan affairs: The Court accepted 51 cases involving foreign affairs and 15 cases involving Hong Kong, Macao and Taiwan affairs, accounting for 2.72% of the Court's total number; 47 cases involving foreign affairs and 13 cases involving Hong Kong, Macao and Taiwan affairs were closed. The cases involved nearly 20 countries and regions, including United Arab Emirates, Bermuda, Panama, Denmark, Germany, France, Gambia, South Korea, Marshall Islands, Japan, Switzerland, Spain, Greece, Singapore, North Korea, Congo (Brazzaville), Liberia, India, Hong Kong, and so on.



3. Judicial openness

1,011 trials were broadcast live on China Open Trials Online, with a total of 656,765 views. Live rate of trial was 66.97%, ranking the second among the intermediate courts in Liaoning Province. 3,305 judgment documents made in 2020 were issued on China Judgments Online, ranking the first among the intermediate courts in Liaoning Province. The Court disclosed the related judicial process information on China Judicial Process Information Online with an effective disclosure rate of 100%, ranking the first among the intermediate courts in Liaoning Province.

II. Work highlights

1. Focus on the big picture, and serve the construction of maritime hub with more strength

The Court fairly and efficiently adjudicated 51 cases involving foreign affairs, 15 cases involving Hong Kong, Macao and Taiwan affairs and equally protected the legal rights and interests of the litigants at home and abroad. The Court held the “Maritime Judicial Guarantee Forum for Urban Development” and provided the special research report named by *Some Thoughts on the Construction of Dalian Maritime Hub* for Dalian Municipal Party Committee, Dalian Municipal Government and Dalian Municipal People’s Congress. The Court issued the maritime trial report in Chinese and English versions and the judicial review report on maritime administrative cases, summarized and refined “*Top Ten Typical Cases*” “*Top Ten Cases on Judicial Service for the People*” and “*Typical Cases involving the Belt and Road*” to serve the new opening-up pattern.

2. Go deep and solid, and build the law-based business environment with more commitments

The Court issued the *Work Plan for 4+9*, visited more than 20 port & shipping enterprises, government organs, islands and fishing villages inside and outside Liaoning province, and convened 9 symposiums to solicit opinions and suggestions broadly. The Court thoroughly investigated 31 prominent problems concerning the law-based business environment, immediately rectified 27 thereof and constantly promoted 4 thereof with long-term mechanisms. The Court issued “Ten Commitments of Litigation Service”, winning a wide praise from the representatives of provincial and municipal people’s congress and news media. The Court introduced the experience of building the law-based business environment in Liaoning courts working conference. A case of confirming illegal administrative registration and compensation was selected in “Typical Cases on Strengthening the Construction of Law-based Business Environment in Liaoning Province”.

3. Stimulate the vitality, enforce the laws and handle the cases with more efficiency

The Court reached a new record with the clearance rate 97.45%, ranking the first among the eleven maritime courts in China and the fourth among the 17 intermediate courts in Liaoning province. 125 open cases over 6 months were cleared up, and the clearance rate reached 93.28%. The Court realized new breakthrough in trial quality strategy, 3 cases were selected as Typical Cases of Maritime Trial in China and 3 as Typical Cases in Liaoning courts; In the selection activity of 5 “One Hundred Excellent Works” among Liaoning courts, 10 cases were selected into “One Hundred Excellent Cases”, 2 trials into “One Hundred Excellent Trials” and 2 judgments into “One Hundred Excellent Judgments”. In the “Annual Event of Improving Trial Quality, Efficiency and Public Credibility and Double Incentives Platform” of Liaoning courts, the comprehensive index of the Court ranked the first among the 17 intermediate courts. The Court perfected the long-term mechanism of solving the difficulties in enforcement, ranking the



first concerning the quality and efficiency of enforcement among the three special courts in Liaoning province. The Enforcement Bureau was awarded “*Collective Second Class Merit*” by Liaoning High People’s Court in “Basically Solving the Difficulties in Enforcement Work”.

4. Promote the convenience, and build the one-stop diversified dispute resolution mechanism with more attention

The Court improved the one-stop diversified dispute resolution mechanism, and completed online inquiry and mediation by making full use of People’s Court Mediation Platform and China Maritime Trial System, and promoted all-round interconnection among diversified dispute resolution forces. The Court implemented the mode of “speedy trial judge handle cases at service counters” and “one-stop distribution, mediation, speedy trial and speedy hearing”, improved consecutively 74 “one-stop” quality and efficiency indicators, smoothed online and offline litigation service channels, implemented the commitments of handling cases immediate, one-off and online, endeavored to achieve “round-the-clock litigation services”, and pushed forward to realize “three prohibitions of influencing the impartiality of judicial trials through interested parties”.

5. People-oriented, and provide smart litigation service with more humanity

The Court dedicated to building a modern litigation service center, set up a vanguard post of Communist Party member, a president reception office for market entity, a judge reception room, a professional mediation room and a lawyer office. The “Legal Aid Workstation” was put into operation. The Court first released “Ten Commitments on Litigation Service” to the public to provide litigation risk assessment, self-filing, self-payment, cross-jurisdiction case filing, self-printing of documents and related litigation service, comprehensively improving the people’s

judicial experience. The quality and efficiency evaluation of litigation service topped the ranking jointly among Liaoning courts. The Court was awarded the Advanced Unit of “Internet + Government Service”, and the litigation service center was awarded the provincial landmark litigation service center. The Court was awarded the Advanced Unit of Court Informatization Construction in China. The Court introduced the experience of smart court construction in the Liaoning court conference, and made a special report in the special informatization conference hosted by the Supreme Court, which was fully affirmed by Zhou Qiang, president of the Supreme Court.

6. Toughen quality and ability, and build the team with more effectiveness

The Court adheres to the revolutionary, standardized, specialized and professional direction, and strives for a loyal, clean and responsible judicial team. A group of young cadres were appointed to the middle and senior leading positions. The Court held six sessions of “Maritime Law Forum” integrated with politics learning, hotspots forecasting and practices exchanging. The Court set up 10 professional-judge-conference teams, a maritime trial report drafting team, a project researching team, a translation team and a cultural construction team. The Court made a comparative study on maritime justice among China, Japan and South Korea with great learning enthusiasm and research ability. A tribunal was awarded “The Advanced Collective of the National Courts”, a judge was awarded “Case Handling Model of the National Courts”, two cadres gained second-class merits, a judge was selected into “One Hundred Case Handling Experts” of Liaoning courts, a cadre was selected into “One Hundred Grassroots Pioneer” of Liaoning courts. In 2020, 42 research achievements won the awards, including 14 national-level items with an increase of 40% over last year and 28 provincial-level items with an increase of 3 times over last year. 3 research projects were completed, 1 of which



was the key project of judicial research of Liaoning courts in 2020.

7. Clear and transparent, and implement judicial openness with more content

The Court ranked highly among the intermediate courts in Liaoning Province in the effective disclosure rate of judicial process information, online live broadcasting rate of court trials and judgments online issuance rate. The Chinese and English website served as an impressive showcase for maritime justice. The WeChat official account updated daily, ranking the first among Chinese maritime courts on the total number of readings and likes. The Court held 4 press conferences, released 154 news articles on media and mainstream websites at provincial level or above, and filmed 10 promotional videos. The Court ranked the fifth in China Maritime Judicial Transparency Index Assessment issued by the Chinese Academy of Social Sciences, which was the best result in the Court's history.

III. Problems and Suggestions

To fully exert the judicial function of maritime trial, foster a sound business environment, and provide a strong maritime judicial protection for the economic and social development, the Court summarizes the maritime trial practices and offers some suggestions for the following maritime entities on how to deal with the risks in operation, management or profession.

1. Suggestion for the domestic export enterprise

Forwarder's Certificate of Receipt (FCR) is a receipt issued by a freight forwarder. It is not a document whereby the carrier warrants the delivery of the goods. It is commonly used in trade terms such as FCA and FOB. According to the FCR document, the foreign trade buyer is generally responsible for transport, ship

chartering and space booking, while the domestic export enterprise, as the actual shipper, delivers the goods to the freight forwarder (usually designated by the foreign trade buyer) who issues the FCR to indicate receipt of the goods, then delivers the goods to the carrier and obtains a bill of lading or a sea waybill. Under the international trade contract, the domestic export enterprise negotiates payment with the bank on the presentation of the FCR, then the FCR passes through the bank to the foreign consignee, and the bill of lading or sea waybill passes to the agent of the freight forwarder at the foreign port of destination, who accepts the goods from the carrier on presentation of the bill of lading or sea waybill and then delivers the goods to the consignee. In accordance with Article 8 (1) of the *Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Cases of Disputes over Marine Freight Forwarding*³, the domestic export enterprise, as the actual shipper, may request the freight forwarder to deliver the bill of lading, sea waybill or other transport documents obtained from the carrier. If the domestic export enterprise does not make such a request, but directly accepts the FCR and uses it for settlement of foreign exchange, when it does not receive payment due to the risk of international trade and sue the freight forwarder for payment loss in a court, such a claim will not be upheld.⁴

Suggestion: The domestic export enterprises should prudently evaluate the transaction risks in international trade, choose the trade term CIF or CFR as far

3 Article 8 (1) of the Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Cases of Disputes over Marine Freight Forwarding provides, "if a freight forwarding enterprise books space upon the entrustment of the contracting shipper and also delivers goods to the carrier upon the entrustment of the actual shipper, when the actual shipper requests the freight forwarding enterprise to deliver the bill of lading, seaway bill or any other shipping document obtained by the freight forwarding enterprise, a people's court shall uphold such a request."

4 For example, the dispute over marine freight forwarding contract between the plaintiff, Shenyang Jianing Plastic Mechanical Automatic Ltd. and the defendant, Tianjin Fanyi International Freight Forwarder Services Ltd. Dalian branch, and the case number was (2019) L72MC No. 980.



as possible, and designate the freight forwarders to arrange transportation by themselves. Even after comprehensive consideration, the foreign trade buyer appoints the freight forwarder to arrange the transportation, and the domestic export enterprise shall also actively consult with the foreign trade buyer to adopt the bill of lading as the transportation and negotiation document. Meanwhile, the domestic export enterprise should fully comprehend the characteristics of the FCR, and realize that it does not have the function of delivering the goods guaranteed by the carrier. To avoid trade risks, under the provisions of Article 72 (1) of the *Maritime Code of the People's Republic of China*⁵ and Article 8 (1) of the *Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Cases of Disputes over Marine Freight Forwarding*, the domestic export enterprise should take appropriate measures to make known to the carrier a request for the issuance of a bill of lading or a request for delivery of a bill of lading to the freight forwarder, apply for a maritime injunction to a maritime court if such a request is frustrated, and actively exercise the right of claim for the issuance and delivery of the relevant documents.

2. Suggestion for the insurance company

In the disputes over marine insurance contracts tried by the Court, some insurance companies trigger exhausting litigations because of operating or managerial negligence, reducing their efficiency of claim settlement and increasing their operating cost. If the insurance agent⁶ entrusted by the insurance company, by

5 Article 72 (1) of the Maritime Code of the People's Republic of China provides, "When the goods have been taken over by the carrier or have been loaded on board, the carrier shall, on demand of the shipper, issue to the shipper a bill of lading."

6 Article 2 (1) of the Provisions on the Supervision and Administration of Insurance Agents (Order No. 11 [2020] of the China Banking and Insurance Regulatory Commission) provides, "For the purpose of these Provisions, "insurance agents" means institutions or individuals that collect commissions from insurance companies and handle insurance business on behalf of insurance companies within the scope authorized

its fault, fails to input the information of the insured which should have been entered into the list of the insured in the process of the insurance business, the insured (or his beneficiary) brings an action when the insurance company refuses to compensate after the insured incident. The court holds that the insurance company bears civil liability for negligence of the insurance agent.⁷ Since the crew members who work on the ship face multiple risks and the insured changes during the insurance period because of the mobility of crew members, such as the insured members increase, decrease and substitute from time to time, many ship operators tend to take out group personal accident insurance for a fixed number of crew members on their ships. In the event of the insured accident stipulated in the insurance contract, the insurance company dares not pay the insurance compensation until the court decides whether the crew member(s) involved in the insured accident is/are in the list of the insured.⁸ When the applicant applies river hull insurance for his inland river vessel, the insurance company does not record the scope of liability in the insurance policy, nor require the applicant to sign the policy or show the insurance clauses to the applicant. In the event of an accident involving an inland river vessel sailing beyond its approved inland river navigation area, a dispute arises between the applicant and the insurance company as to whether “coastal” falls within the scope of insurance liability. The court decides that the navigation beyond the approved area does not belong to the insurance liability of the insurance company and the insurance company shall not assume the

by insurance companies, including full-time insurance agencies, sideline insurance agencies, and individual insurance agents.”

7 For example, the dispute over marine insurance contract between the plaintiffs, Zhou X etc. and the defendant, Huatai Insurance Co., Ltd., Jingzhou Center Affiliate and the third party, Cong X, and the case number was (2019) L72MC No. 982.

8 For example, the dispute over marine insurance contract between the plaintiffs, Chen X etc. and the defendant, Pingan Endowment Insurance Co., Ltd. Liaoning Branch, and the case number was (2018) L72MC No. 268.



insurance liability.⁹

Suggestion: The insurance company should strengthen the supervision and management of the insurance agent, strictly examine the insurance agent's qualification, effectively regulate the operation of the insurance agent, and prudently check the insurance policy, applicant's eligibility information, the subject matter of the insurance and the insured amount filled out by the insurance agent to avoid the loss caused by his negligence.¹⁰ When accepting group personal accident insurance, the insurance company shall explicitly instruct the applicant that it may change the insured during the insurance period, and shall inform the applicant in detail and with an accuracy of the application process and time requirements for the change of the insured. When the applicant applies for a change of the insured, the insurance company shall timely examine such a request and modify the insurance contract and the list of the insured upon approval.¹¹ When underwriting inland river hull insurance, the insurance company shall explicitly record the scope of liability agreed with the applicant in the application for insurance and the insurance policy, and shall precisely inform the applicant of the scope of insurance liability, to avoid exhausting litigations caused by the parties' dispute over the scope of insurance liability.

3. Suggestion for the ocean seamen

9 For example, the dispute over marine insurance contract between the plaintiff, Zheng X and the defendant, PICC Property and Casualty Co. Ltd., Huaibin Affiliate and the third party, Henan Huaibin Rural and Commercial Bank Co. Ltd., and the case number was (2019) L72MC No. 22.

10 Article 162 of the Civil Code of the People's Republic of China provides, "A civil juristic act performed by an agent in the principal's name within the scope of authority is binding on the principal."

11 Article 20 of the Insurance Law of the People's Republic of China provides, "The insurance applicant and insurer in an insurance contract may modify the contract upon consultation. To modify an insurance contract, the insurer shall endorse the insurance policy or any other insurance certificate or attach an approval slip thereto, or the insurance applicant and insurer shall enter into a written agreement on the modification."

In judicial practice, when it is a foreign ship served by the seamen who engage in ocean operation, some seamen sign the labor contract with the dispatch entities in China, while others sign the contract of seaman service directly with the foreign shipowners. The former seamen establish the labor contract relationship with the dispatch entities, and the seamen's rights and interests can often be fully and comprehensively protected in accordance with the *Labor Contract Law of the People's Republic of China*. The latter seamen establish the service contract relationship with the foreign shipowners, which are not within the applicable scope of the above law¹², can be only confirmed in accordance with Article 41¹³ in the *Law of the People's Republic of China on the Application of Law in Foreign-related Civil Relations* and clauses of application of law stipulated in the contract.¹⁴ In addition to the difficult delivery and enforcement, the seamen's rights cannot be so comprehensively and fully protected as in accordance with the *Labor Contract Law of the People's Republic of China*.¹⁵ The confirmation and exercise of the

12 Article 2 of the Labor Contract Law of the People's Republic of China provides, "The Law applies to the conclusion, performance, change, cancellation or termination of the labor contract between the organizations (such as enterprises, individual economic organizations and private non-enterprise units) in the People's Republic of China (hereinafter referred to as Employer) and the worker."

13 Article 41 of the Law of the People's Republic of China on the Application of Law in Foreign-related Civil Relations provides, "The parties involved can choose the laws to which the contract is applicable upon the agreement. If not, the law in the habitual residence of the party whose performance of obligation reflects the characteristics of the contract the most or other law with the closest connection to the contract shall prevail."

14 In case that there is no such provision, the parties involved can assert the application of law pursuant to the provisions of Article 17 (2) of the Provisions of the Supreme People's Court on Several Issues concerning Trial of Cases Involving Seaman-related Disputes, "As for the labor contract between the seaman and the shipowner, if the party involved doesn't choose the applicable law, but claim the law applicable to the place of labor dispatched, main office of the shipowner or flag country, such claim shall be supported."

15 For example, the dispute over contract of seaman service between the plaintiff, Shi X and the defendant, Jiade Sea Transportation Co., Ltd., etc., and the case number was (2020)L72MC No. 601.



maritime lien can be separated in accordance with Article 6¹⁶ in the *Provisions of the Supreme People's Court on Several Issues concerning Trial of Cases Involving Seaman-related Disputes*.¹⁷ The exercising period of the maritime lien is the scheduled period, and such a period will be terminated if the maritime lien has not been enforced within one year of the existence of such maritime lien.¹⁸ In judicial practice, the confirmations of the maritime lien requested by the seamen beyond one year of the existence of such maritime lien are not supported by the court.¹⁹

Suggestion: The seamen engaging in ocean operation shall prefer to sign the labor contract and establish the labor contract relationship with the shipowner, ship operator or dispatch entity in China to comprehensively protect their rights and interests in accordance with the *Labor Contract Law of the People's Republic of China*. When the other party of the contract is behind in payment of wages, other remuneration, crew repatriation and social insurance costs attached by a maritime lien to the seamen²⁰, it is necessary for the seamen to confirm that they enjoy the

16 Article 6 of the Provisions of the Supreme People's Court on Several Issues concerning Trial of Cases Involving Seaman-related Disputes provides, "As for the maritime claim attached by a maritime lien, if the seaman fails to request the arrest of the ship giving rise to the maritime lien pursuant to Article 28 of the Maritime Law of the People's Republic of China, but claim the confirmation that it has the right of priority against the ship giving the maritime lien within a certain period, such claim shall be supported." The period specified in the preceding paragraph shall be one year of the existence of such maritime lien.

17 For example, the dispute over contract of seaman service between the plaintiff, Zhang X and the defendant, Joint Pacific Shipping Co. Ltd., and the case number was (2020) L72MC No. 1189.

18 Article 29 (1) of the Maritime Code of the People's Republic of China provides, "A maritime lien shall, except as provided for in Article 26 of this code, be extinguished under one of the following circumstances: (I) The maritime claim attached by a maritime lien has not been enforced within one year of the existence of such maritime lien;"

19 For example, the dispute over confirmation of maritime lien between the plaintiff, Liu X and the defendant, Shi X, and the case number was (2020) L72MC No. 1043.

20 Article 22 (1) of the Maritime Code of the People's Republic of China provides, "The following maritime claims shall be entitled to maritime liens: (I) Payment claims for wages, other remuneration, crew

maritime lien through litigation as soon as possible within one year of the existence of such maritime lien even though the ship attached with the maritime claim is not found. After the confirmation, the seamen shall also actively exercise the maritime lien within the above-mentioned one year to make their creditor's rights fully guaranteed and avoid the extinguishment of the maritime lien because the one-year period expires.

4. Suggestion for the fishery boat accident investigation authority

In recent years, the relevant administrative lawsuits have been often brought because the fishery boat accident investigation authority fails to perform duties according to law after the overwater work safety accident occurs to the fishery boat. The conflicts mainly focus on the failure of the fishery boat accident investigation authority in reporting the accident according to law, fully performing investigative functions with incomprehensive and incomplete investigation report content, or delivering the closing report of the accident to the parties concerned or delivering it timely.²¹ The failure of fishery boat accident investigation authority to perform duties legally goes against handling the follow-up civil disputes related to the accident and is harmful for the administrative organ to establish the good image of law-based governance.

Suggestion: The fishery boat accident investigation authority shall comprehensively master the working form of accident investigation which it has the right to conduct stipulated in the *Provisions for Reporting, Investigating and*

repatriation and social insurance costs made by the Master, crew members and other members of the complement in accordance with the relevant labor laws, administrative rules and regulations or labor contracts;"

21 For example, the dispute over failure to perform statutory duties between the plaintiff, Nie X and the defendant, Yingkou Agriculture and Rural Comprehensive Development Service Center, and the case number was (2019) L72XC No. 36.

Handling Overwater Safety Accidents of Fishery Boats and the content required in the accident investigation report, perform the investigation functions according to law²², carry out the complete investigation on the content which shall be included in the accident investigation report, form a complete and detailed accident investigation report²³ and timely²⁴ deliver the accident closing report covering the accident investigation report content to the parties involved. As a result, the parties involved will be convinced of the results of the report, and it will further embody the administrative organ's working attitude of being dedicated, serious and rigorous, honest and fair in handling the accident.

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- 22 Article 5 (1) of the Provisions for Reporting, Investigating and Handling Overwater Safety Accidents of Fishery Boats (Decree [2012] No. 9 of Ministry of Agriculture) provides, "The departments of fishery administration under the people's governments at or above the county level and their subordinate fishery administration and port supervision agencies (hereinafter referred to as fishery boat accident investigation authorities) are responsible for reporting the overwater safety accidents of fishery boats."
- 23 Article 22 of the Provisions for Reporting, Investigating and Handling Overwater Safety Accidents of Fishery Boats (Decree [2012] No. 9 of Ministry of Agriculture): "The overwater safety accident investigation report shall include the following contents: (I) Overview and main performance data of boat and facilities; (II) Name, address and contact way of the owner or operator of boat and facilities; (III) Accident occurrence time, place, process, weather, water area and loss etc.; (IV) Cause, type and nature of the accident; (V) Salvation and rehabilitation treatment; (VI) Affirmation of accident responsibilities; (VII) Rectification measures required to be taken by the parties involved; (VIII) Handling opinions or suggestions."
- 24 Article 21 of the Provisions for Reporting, Investigating and Handling Overwater Safety Accidents of Fishery Boats (Decree [2012] No. 9 of Ministry of Agriculture) provides, "The fishery boat accident investigation authority shall complete the overwater safety accident investigation report within 60 days as of the date when the accident report is received. In particular cases, the period of completing the accident investigation report can be prolonged after getting the approval from the superior fishery boat accident investigation authority, but the prolonged period shall not exceed 60 days. The time required for inspection or appraisal isn't included into the accident investigation period."

IV. Typical Cases

1. The period which has substantial impact on the contract performance is included into the duration of contract performance affected by the force majeure of COVID-19 pandemic

In the case of dispute over charter party between Tangshan Caofeidian Xiangkun Shipping Co., Ltd. (hereinafter referred to as Xiangkun Company) as the plaintiff and Dalian Shipbuilding Industry Co., Ltd. (hereinafter referred to as DSIC) as the defendant²⁵, DSIC chartered the floating crane ship owned by Xiangkun Company for the overwater hoisting operation with the agreement that the operating period was from October 16, 2019 to January 24, 2020, the grace period was from January 25 to February 8, 2020 with no charge, and the demurrage shall be charged for extended use. Xiangkun Company completed the majority of hoisting operation from October 16, 2019 to January 23, 2020. DSIC had no arrangement for hoisting operation from January 24 to 30, 2020. Affected by the COVID-19 pandemic, Dalian COVID-19 pandemic prevention and control command issued the NO.3 order on January 31, 2020, which commanded all kinds of enterprises in the city shall resume work no earlier than 24:00 on February 9, 2020. Both the two companies resumed work on February 10, 2020. Through mutual consultation, Xiangkun Company completed the rest of hoisting operation from February 11 to 24, 2020. Xiangkun Company argued that DSIC should be responsible for the demurrage from February 9 to 24, 2020. The Court held that, after the COVID-19 pandemic was identified as a public health emergency, the prevention and control measures taken by governments at all levels and relevant departments to protect people's health and safety should constitute force majeure.

²⁵ The case number was (2020) L72MC No. 403.



The period from January 25 to 30, 2020 was the Spring Festival and also the legal holiday in China. DSIC did not arrange Xiangkun Company to carry out the hoisting operation during the period, nor prove that DSIC made preparation work related to the hoisting operation during the period. The period was the duration of force majeure affected by the COVID-19 pandemic but had no substantial impact on the contract performance, thus it should not be included into the duration of contract performance affected by the COVID-19 pandemic. The duration of contract performance affected by the COVID-19 pandemic was from January 31 to February 8, 2020. The Court ruled that DSIC paid Xiangkun Company RMB 1,133,600 of demurrage and its interest.

2. Where the entity who declared imported goods to the Customs loses the identity of consignee, the related interested party is entitled to request the entity to cancel the declaration

In the case of dispute over removal of obstacles between Cocamar Cooperativa Agroindustrial (hereinafter referred to as Cocamar Company) as the plaintiff and Liaoning XinShi Trading Company (hereinafter referred to as XinShi Company) as the defendant²⁶, Cocamar Company as the shipper, consigned soybeans from Brazil, and Evergreen Company as the carrier, issued three original bills of lading, which noted the consignee was to order by XinShi Company. When the goods arrived at Dalian port, XinShi Company declared to China Customs against the copy of bill of lading as consignee. Later, Cocamar Company returned the above-mentioned full set of original bills of lading, Evergreen Company altered the consignee at the request of Cocamar Company and reissued the bills of lading. The legal holder of the second set of bills of lading was unable to declare and take

26 The case number of the first instance was (2019) L72MC No. 947, and the case number of the second instance was (2020) LMZ No. 257.

delivery of the goods since Xinshi Company had made declaration. The Court held that, the soybean involved was imported goods, and customs declaration was the compulsory procedure for taking delivery of goods. XinShi Company was not the holder of the original bills of lading and had no right to take the delivery of above-mentioned goods. Evergreen Company and Cocamar Company had the right to negotiate and change the articles such as the consignee of the contract. The second set of bills of lading should be effective and valid in the case. XinShi Company was not the consignee anymore and its customs declaration hindered Cocamar Company from realizing the rights under bill of lading in accordance with the law. Therefore the Court ruled that XinShi Company cancelled the customs declaration.

3. The multimodal transport operator, who does not issue the multimodal transport documents, takes the entire transport responsibility only to the shipper

In the case of dispute over contract of carriage of goods by sea between Cathay Century Products Insurance Co., Ltd. (hereinafter referred to as Cathay Company) as the plaintiff and Damu International Logistics Group Co., Ltd. and Liaoning Xindamu Logistics Co., Ltd. (hereinafter referred to as Xindamu Company) as the defendants²⁷, Xindamu Company entered a transport contract with Dalian Huarui Heavy Industry International Trade Co., Ltd. (hereinafter referred to as Huarui Company), the outsider of the case, agreeing that Xindamu Company was responsible for inland transportation of goods, export declaration and inspection to delivery of goods EX-ship's hold at the port of destination from China factory to Shanyong port of Vietnam. Under a voyage charter, Xindamu Company transported the above goods by chartering MV YINGFU from Tairong

27 The case number of the first instance was (2017) L72MC No. 885, and the case number of the second instance was (2020) LMZ No. 269.



International Shipping Company, the outsider of the case. The shipping agency issued the bill of lading on behalf of the captain. When MV YINGFU arrived at the port of destination, some of the goods were found damaged. The right of subrogation to claim for compensation was transferred to the cargo insurer, Cathay Company, after Cathay Company paid the indemnity to Taisu Hejing Company, the consignee noted in the bill of lading. The Court held that, Xindamu Company and Huarui Company established the legal relationship of multimodal transport contract in accordance with the *Maritime Code of the People's Republic of China*. As multimodal transport operator, Xindamu Company, who did not issue the multimodal transport documents, took the entire transport responsibility only to its counterpart of the contract, Huarui Company. Cathay Company failed to prove that the bill of lading involved in the case was authorized by Xindamu Company or issued by the shipping agency on behalf of Xindamu Company, the contract of carriage goods by sea proved by the bill of lading was not established between Xindamu Company and Taisu Hejing Company. Therefore, the Court rejected the whole claim of Cathay Company.

4. On condition that the claimant provides sufficient and effective guarantee, the maritime injunction should be granted and executed, not affected by the possessory lien on goods argued by the person against whom a claim is made

In the case of compulsory delivery between Xiamen Jianfa Products CO., Ltd. (hereinafter referred to as Jianfa Company) as the Claimant and Maersk A/S (hereinafter referred to as Maersk Company) as the person against whom a claim is made²⁸, Maersk Company, in the hearing organized by the Court, argued that it did not release goods but exercised the possessory lien on goods in accordance

28 The case number was (2020) L72XB No. 2.

of the law, which didn't breach the terms of contract of carriage of goods by sea. The Court held that, the breach of legal provisions or contractual stipulations by the person against whom a claim is made should be one of conditions where the maritime injunction is granted. Maersk Company, the carrier under the contract of carriage of goods by sea, was obliged to deliver the goods to the consignee or the holder of bill of lading, and the failure to deliver the goods breached its duty. In addition, the purpose of exercising the possessory lien on goods is to guarantee the realization of creditor's right. Maersk Company argued to exercise the possessory lien on goods, but Jianfa Company, as the consignee noted in the bill of lading, provided the sufficient and effective bank guarantee for releasing the goods, which not only guaranteed the realization of the carrier's creditor's right and interest, but also avoid the further expansion of goods loss and expenses. Therefore, the Court granted the maritime injunction in accordance with the law and ordered Maersk Company to release the goods to Jianfa Company.

5. The International freight forwarding company who does not accomplish the entrusted affairs has no right to require the principal to pay remuneration, if it fails to prove there are reasons not attributable to it

In the case of dispute over contract of freight forwarding by sea between Yantai Anxin International Logistics Co., Ltd. (hereinafter referred to as Anxin Company) as the plaintiff and Dalian Jincheng Logistics Supply Chain Co., Ltd. (hereinafter referred to as Jincheng Company) as the defendant²⁹, Anxin Company authorized Jincheng Company to handle the general affairs about five shipments from Dalian, China to Singapore, including export booking (BBK split

29 The case number of the first instance was (2020) L72MC No. 542, and the case number of the second instance was (2020) LMZ No.1244.



hoisting), stacking, packing, strapping, reinforcement and inbound transportation. Jincheng Company accepted the authorization but was frustrated during the process of arranging the goods to enter the port. The goods failed to ship as scheduled, but Jincheng Company still required Anxin Company to pay remuneration. Anxin Company claimed the reason the goods failed to enter the port was that Jincheng Company did not hoist the special container involved in the case by BBK split hoisting. Jincheng Company argued that the failure was due to the weather. Both the parties failed to provide sufficient evidence to support their opinions. The Court held that, in accordance with Article 405 of the *Contract Law of the People's Republic of China* which provides that if the entrustment contract is dissolved or the entrusted affairs cannot be accomplished due to reasons not attributable to the agent, the principal shall pay corresponding remuneration to the agent, Jincheng Company, as the trustee, failed to prove that the failure to ship the goods was due to reasons not attributable to it, therefore there was no legal basis for it to accept Anxin Company's remuneration and it should returned the remuneration.

6. When the contract-offering party is at fault for the invalidity of the construction subcontract which made his letter of guarantee invalid, he should assume joint and several liability for the corresponding payment in accordance with the law

In the case of dispute over port dredging contract between Ningbo Yongyi Ocean Engineering Co., Ltd.(hereinafter referred to as Yongyi Company) as the plaintiff and Dalian Hangsheng Port Construction Engineering Co., Ltd. (hereinafter referred to as Hangsheng Company) as the defendant and Dalian Huichang Terminal Co., Ltd. (hereinafter referred to as Huichang Company) as the defendant³⁰, Huichang Company offered the port berth construction project

30 The case number of first instance was (2018) L72MC No. 7, and the case number of the second instance

to Hangsheng Company without port construction qualification, and Hangsheng Company subcontracted the dredging project of the harbor basin to Yongyi Company without construction qualification. Both the above-mentioned contracts were invalid. Although the latter contract was cancelled before the completion of the project, yet Hangsheng Company recognized the quality of completed project. Therefore, the Court ruled that Hangsheng Company should make the corresponding payments to Yongyi Company. Since the contract between Hangsheng Company and Yongyi Company was invalid, the letter of guarantee issued by Huichang Company to Yongyi Company for the payment of the project was invalid, too. Knowing that Hangsheng Company did not have the relevant construction qualifications, Huichang Company still offered the port berth construction project to Hangsheng Company and confirmed that Hangsheng Company subcontracted the dredging project of the harbor basin to Yongyi Company, which belonged to the situation of providing a guarantee for the principal contract knowing that it is invalid, and Huichang Company is thereupon at fault for the invalidity of the guarantee contract. In accordance with the provisions of Article 8 of the *Interpretation of the Supreme People's Court on Several Issues Concerning the Application of the Guarantee Law of the People's Republic of China*, the Court ordered Huichang Company to assume joint and several liability for one third of the aforementioned project prices.

7. When the creditor and the debtor agree to change the principal contract of the ship operation loan, they shall have beforehand the written consent from the guarantor. Otherwise, the guarantor shall no longer bear the guarantee responsibility

In the case of dispute over loan contract for ship operation between Bank of China



Limited Dandong Branch (hereinafter referred to as Bank of China Dandong Branch) as the plaintiff and Dandong Jinshengshui Fishery Co., Ltd. (hereinafter referred to as Jinshengshui Company), Dandong Feng'ao Ship Industry Co., Ltd. (hereinafter referred to as Feng'ao Company), Song X and Zhang X as the defendants³¹, as agreed, Feng'ao Company's term of guarantee was up to the date when the ship was registered for mortgage. Since the lender Bank of China Dandong Branch and the borrower Jinshengshui Company failed to register the mortgage for the ship as agreed in the loan contract, the consequence of unreasonable extension of the guarantee term shall not be borne by Feng'ao Company. Moreover, Bank of China Dandong Branch did not pay the loan to Feng'ao Company, the borrower's counterparty and the guarantor of the loan contract, as agreed in the loan contract, and changed the loan recipient who had been agreed in the contract. In accordance with Article 24 of the *Guarantee Law of the People's Republic of China* which provides "When the creditor and the debtor change the principal contract, they shall have beforehand the written approval from the guarantor. The guarantor assumes no more guarantee responsibilities if the change is made without its approval", the Court rejected Bank of China Dandong Branch's request for Feng'ao Company to bear joint and several responsibility.

8. Consumers who purchase yachts are protected by the Law of the People's Republic of China on the Protection of Consumers' Rights and Interests, and producers shall bear punitive compensation liability for their frauds

In the case of dispute over contract of sale and purchase of ship between Yu X as the plaintiff and Dalian Cihang Yacht Co., Ltd. (hereinafter referred to as Cihang Company) as the defendant and Weihai JinyunYacht Co., Ltd. (hereinafter

31 The case number was (2020) L72MC No. 182.

referred to as Jinyun Company) as the defendant³², Yu X ordered a new yacht from the seller, Cihang Company. As agreed, Cihang Company was responsible for handling the ship inspection procedures of the yacht. Later, Cihang Company delivered a yacht and ship inspection certificates of the same model built by the manufacturer Jinyun Company. In the process of negotiating and handling the case of a bottom break of the yacht, Yu X discovered that there were discrepancies in the ship inspection procedures on where the yacht left the factory and where it was naturalized. Yu X believed that Cihang Company and Jinyun Company had sales fraud, and requested to rescind the yacht sales contract, and requested Cihang Company and Jinyun Company to jointly refund RMB 180,000 of the purchase price and jointly compensate for the loss of RMB 360,000. The Court held that, Cihang Company delivered an unqualified yacht as the subject of the sales contract, and failed to prove that he had ordered a new yacht from Jinyun Company, paid the price, transported the new yacht to Dalian or done the related things. It was presumed that Cihang Company intentionally concealed the true status of the yacht when he entered into the contract, which constituted a fraud. The design and purpose of this yacht were for private use, which was within the scope of commodities specified in Article 2 of the *Law of the People's Republic of China on the Protection of Consumers' Rights and Interests*. According to the Law, the Court ruled to rescind the yacht sales contract signed between Yu X and Cihang Company, ordered Cihang Company to refund the purchase price of the yacht to Yu X and bear punitive compensation liability, and rejected Yu X's claim against Jinyun Company.

32 The case number of the first instance was (2020) L72MC No. 64, and the case number of the second instance was (2020) LMZ No.1190.



9. In the absence of evidence to the contrary, the maritime accident report made by the administrative organ can be used as evidence for the court to determine the facts of the case, but the responsibility of the parties should be determined by the court after examining the facts

In the case of dispute over liability for personal injury at sea between Li X, Wei X, Liu X as the plaintiffs and Xu X as the defendant³³, Xu X hired Sang X to drive the motorboats at Dalian Changxing Island Beach and charged tourists to experience the motorboat sailing at sea. In the sea ride process, the motorboat driven by Sang X cut Liu XX with an injury in the head who was swimming in the sea, and Liu XX died despite emergency rescue efforts. In accordance with the employer's liability provided in Paragraph 1 of Article 9 of the *Interpretation of the Supreme People's Court on Several Issues concerning the Application of Law in the Trial of Personal Injury Compensation Cases*, Sang X was responsible for the accident, and Xu X as an employer bore the tort liability. In addition, Article 26 of the *Tort Liability Law of the People's Republic of China* provides that, "Where the infringer is also attributable to the damage, the liability of the infringer may be mitigated." Although the maritime accident report made by the administrative organ held that Liu XX was not obviously at fault as a tourist, the Court held that in the case of several motorboats sailing on the sea, Liu XX should know the danger of swimming and take necessary protection and warning measures. Liu XX didn't take necessary warning measures, and was at fault for the accident, too. The Court ruled that Xu X's liability as the infringer was reduced by 10%.

33 The case number was (2020) L72MC No. 334.

10. The evaluation of “land reclamation” should be based on both the actions and the objective results, rather than just the state of sea surface

In the case of revocation for administrative penalty decision between Zou X as the plaintiff and Dalian Jinpu New District Agriculture and Rural Bureau as the defendant³⁴, Zou X claimed that the part of sea use in 2015 was just to level out the historically formed waste accumulation area, and the survey report also showed that the accumulation area had been formed in 2014, so the sea use should not be considered as land reclamation. Dalian Jinpu New District Agriculture and Rural Bureau argued that according to the coastline revision data published in 2009, the accumulation area belonged to the sea area and had been formed into the land, so Zou X’s use of the sea should be identified as land reclamation. The Court held that, according to the relevant provisions of sea area management, “land reclamation” was referred as the land that can become an effective shoreline after building disks and modifying sea areas, completely changing the natural properties of the sea area. The criterion of land reclamation should be the act of building embankments and reclaiming the sea for land, resulting in the formation of a new stable boundary between land and sea. Zou X did not build the embankment to enclose the sea area, and the new stable sea-land boundary was formed before the use of the sea, Zou X’s leveling and construction in the accumulation area should not be considered as land reclamation. Therefore, the Court revoked the administrative penalty decision of Dalian Jinpu New District Agriculture and Rural Bureau.

34 The case number was (2019)L72XC No. 8.



11. The Court upholds the ideal of enforcement with goodwill and politeness, combining enforcement measures with mediation means to provide high-quality judicial services for the development of enterprises

In the case of application for dispute over recourse of guarantee contract between China Orient Asset Management Co., Ltd. Liaoning Branch (hereinafter referred to as Orient Asset Liaoning Company) as the applicant and China Zhonghaizhi Co., Ltd. (hereinafter referred to as Zhonghaizhi Company)³⁵ as the person subjected to execution, which was to enforce designated by Liaoning High People's Court. Since the end of 1999, Zhonghaizhi Company owed Orient Asset Liaoning Company US \$2,288,514.57 and its interest. After placing the case on the docket, the Court immediately and fully inquired and controlled the bank accounts of Zhonghaizhi Company and froze more than RMB 700 thousand. According to the property clues provided by Orient Asset Liaoning Company, the Court found that Zhonghaizhi Company, as the major shareholder, held the stocks of the listed company, and the case could be closed by selling the stocks directly, but Zhonghaizhi Company requested the suspension of enforcement. In order to avoid incalculable negative impact on the business development of the enterprise, the Court did not rigidly take sell-off measures, but actively organized both the two parties to calculate and negotiate repeatedly on the principal and interest of the creditor's rights. Finally, the two parties reached a settlement. Zhonghaizhi Company actively fulfilled the outstanding principal and interest with the total number of about RMB 47 million. After the case was closed, the listed company's additional stock placement was on schedule and not adversely affected.

35 The case number was (2020) L72Z No. 275.

12. Where the real estate is mortgaged before the lease, the auction of real estate made by the court with the mortgagee's consent does not affect the realization of the mortgage right, even without the consent of lessee or secondary lessee

In the case of lawsuit of enforcement opposition between Hu X as the plaintiff and Wang X, Wang XX, Zheng X as the defendants, Shenyang Metal Materials General Factory, Zhou X, Shenyang Jiadian Logistics Co., Ltd., Qu X as the third parties³⁶, Hu X as the secondary lessee raised an opposition for enforcement on the grounds that the Court's auction was illegal without his consent and removal of the lease in advance, and claimed that he had a legal and valid lease on the real estate and refused to perform the enforcement duty of vacating the house requested by the Court. The Court held that the real estate had been mortgaged before the lease, and the auction of real estate with the mortgagee's consent was a specific way for the mortgagee to exercise the right of mortgage to realize the repayment of the debt. The proceeds of the auction had priority in paying off the mortgagee's claim, and the lease right did not adversely affected the realization of the prior mortgage, and should not accord with the articles about the lease right provided in the *Provisions of the Supreme People Court on Auction and Sale of Properties in Civil Enforcement Proceeding by People's Courts*, "continuous existence in the to-be-auctioned property may affect the realization of the prior real right for security and other priorities of getting repaid, the people's court may eliminate them prior to the auction", so the auction did not need to obtain the consent of the secondary lessee and remove the right of lease in advance. The Court held that the auction was justified and rejected Hu X's claim.

³⁶ The case number was (2020) L72MC No. 527.



Concluding remarks

With the rapid development of marine economy, managing the oceans has become an integral part of national governance system. Over 30-year development and practice of maritime courts has fully demonstrated that maritime courts are specialized courts for not only adjudicating maritime and admiralty cases, but also providing a solid judicial guarantee to enhance the implementation of national strategies and promote the construction of a maritime community with a shared future during the historical intersection of the “two centuries”. Working hard to write the opening answer sheet and striving to create the future of maritime court, Dalian Maritime Court will always insist that the justice should respond to what the people need. From the perspective of serving the big picture, the Court will clarify the responsibilities, assume the missions and make the implementations. The Court will make a good start and escort it well with the power of maritime justice. The Court will protect people’s livelihood, relieve people’s worries and warm people’s hearts with cozy and smart services. The Court will enhance the responsibility, activate the vitality and promote the first-class building with a strong style. The Court will strive to press the accelerating key of the first-class maritime court’s construction, and endeavor to paint a magnificent picture scroll of first-class construction.